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In re Application of :
SUGINO :
Application No.: 09/831,622 : DECISION ON REQUEST
PCT No.: PCT/JP99/06275 :
Int. Filing Date: 11 November 1999 :
Priority Date: 13 November 1998 :
Attorney Docket No.: 2001_0559A :
For: NOVEL PROTEIN UTILIZATION :
THEREOF :

This is a decision on applicants' "Petition Under 37 CFR 1.182" filed in the Patent and Trademark Office (PTO) on 05 April 2002. The petition fee has been submitted.

BACKGROUND

On 11 November 1999, applicant filed international application PCT/JP99/06275 which claimed a priority date of 13 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 May 2000. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States was extended to expire on 13 May 2001. The international application listed Hiroshi Sugino as applicant/inventor.

On 11 May 2001, applicant filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); the international application; a preliminary amendment; and declaration executed by Hiromu Sugino.

On 05 October 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.492(a) and (b) must be filed. The notification indicated that the declaration was not executed in accordance with 37 CFR 1.66 or 37 CFR 1.68. The notification set a two-month time limit in which to respond.

On 15 October 2001, applicant filed "Response" which stated that, "[a]n executed declaration was submitted with the filing of the 371 application on May 11, 2001." Applicant included a copy of the declaration filed 11 May 2001.

On 18 December 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration filed 11 May 2001 was not executed in accordance with 37 CFR 1.66 or 37 CFR 1.68 and does not identify the inventor. The notification set a two-month time limit in which to respond.

On 09 January 2002, applicant filed "Response" which states, "[t]he PTO is respectfully requested to use the correct spelling of the inventor's name in the PTO records, as shown on the executed Declaration submitted herewith. The PTO is respectfully requested to disregard the spelling error in the first name of the first inventor which appears in the international application papers." In a decision dated 26 February 2002, applicant's request to change the inventor's name was dismissed without prejudice.

On 05 April 2002, applicant filed the present petition under 37 CFR 1.182 and a four-month extension of time fee.

DISCUSSION

A review of the present petition, including the "Statement of Messrs. Hirofumi Usami and Akira Sekiguchi" and "Statement of Mr. Sugino" reveal that without deceptive intent the PCT documents corresponding to the above identified application incorrectly transliterated the first name of the inventor as "Hiroshi" instead of "Hiromu." As indicated in Section 201.03 of the Manual of Patent Examining Procedure, where a typographical or transliteration error in the spelling of an inventor's name is discovered, a petition under 37 CFR 1.48(a) is not required. Accordingly, the spelling of the inventor's name is noted for the record.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.182 is GRANTED.

This application is being forwarded to United States/Elected Office for further processing with the name of the inventor as HIROMU Sugino and for review of the national stage papers submitted 11 May 2001 and, if appropriate, preparation and mailing of the Notification of Acceptance of Application under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a date of **11 May 2001** under 35 U.S.C. 371(c).



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